

KADK010059802025



Presented on : 18-12-2025
Registered on : 18-12-2025
Decided on : 03-03-2026
Duration : 0 years 2 months 13 days

**IN THE COURT OF THE II ADDL. DISTRICT &
SESSIONS JUDGE D.K., MANGALURU**

Present

SRI. JAGADEESH V.N.

B.A., M.L.,

II Addl. District & Sessions Judge,
Dakshina Kannada, Mangaluru

Dated this the 3rd day of March 2026

CRL.R.P./298/2025

Revision Petitioner:

The State -
Bantwal Town police station.

(By learned Public Prosecutor,
D.K., Mangaluru)

Versus

Respondents:

1. Bhaskar Devadiga
Aged 52 years (in the year 2025)
S/o. Kunniyanna
R/at Pollukodi house, Nandavara,
Sajipamunnur village, Bantwal Taluk,
D.K. District.
2. Sunil
Aged 30 years (in the year 2025)
S/o. Nagesh Devadiga
R/at Uppugudde house,
Sajipamunnur village, Bantwal Taluk,
D.K. District.
3. Adarsh
Aged 28 years (in the year 2025)
S/o. Ganesh Jogi
R/at near Mahaganapathi Temple,
Panemangaluru village, Bantwal Taluk,
D.K. District.
4. Ravi
Aged 26 years (in the year 2025)
S/o. Jayarama
R/at Panemangaluru, Uppugudde,
Pollukodi house, Nandavara,
Bantwal Taluk, D.K. District.
5. Nagesh
Aged 67 years (in the year 2025)

S/o. Sridhara Devadiga
R/at Uppugudde house, Bantwal Taluk,
D.K. District.

(By Sri Umesh Kumar Y., Advocate)

ORDER

The present Criminal Revision petition assails the order dated 22.09.2025 passed in Cr.No.107/2025 of Bantwal Town Police station by the Addl. Civil Judge and J.M.F.C., Bantwal.

2. For the sake of convenience, the parties to the revision shall be referred to their original ranks held before the trial court.

3. On 22.09.2025, the accused persons were produced before learned jurisdictional Magistrate by the Investigating officer along with remand application and other materials. The learned jurisdictional Magistrate by considering the material placed on record released the accused for non-compliance of Section 35 (3) of B.N.S.S. According to learned jurisdictional Magistrate, the Investigating officer did not issue notice u/s.35 (3) of

BNSS, which is mandatory. The said order has been challenged by the prosecution in this revision.

4. This Court issued notice to the accused. The accused appeared through their counsel and filed objection.

5. Heard, learned Public Prosecutor and learned counsel for the accused.

6. Having heard learned Public Prosecutor and learned counsel appearing for the accused persons and perused the materials available on record, the following points arise for my consideration are:

1. Whether the State/revision petitioner has made out grounds to interfere with the order passed by the trial court?

2. What Order?

7. My findings to the above points are:

Point No.1 : In the negative

Point No.2 : As per final Order
for the following:

REASONS

8. **Point No.1:** The order dated 22.09.2025 is produced along with revision. The order-sheet indicates, 5 accused persons were produced before learned jurisdictional Magistrate on 22.09.2025 at 7.30 p.m. along with remand application, outpatient record, arrest memo and other materials. The case was registered against the accused for the offence punishable under Section 112 of B.N.S. and Section 78 (3) of the Karnataka Police Act. The punishment provided under Section 112 of BNS is up to 7 years. The punishment provided under Section 78 (3) of Karnataka Police Act is less than 7 years. The trial court by considering the judgment of Hon'ble Apex Court in the case of Arnesh Kumar v. State of Bihar and another and recent judgment of Hon'ble Apex Court in Sidarth v. State of U.P. held that issuance of notice u/s.35 (3) is mandatory when the punishment is less than 7 years. Admittedly, the accused were charged for the offence punishable under Section 112 of B.N.S. and Section 78 (3) of the Karnataka Police Act, wherein punishment provided is less than 7 years. The

trial court also held case was registered on 22.09.2025 and on the same day, the accused were arrested. No notice was issued to the accused by the Investigating officer under Section 35 (3) of BNSS. The trial court after considering the same has released the accused for non-compliance of Section 35 (3). A perusal of entire revision petition, it is not forthcoming whether any notice was issued to the accused u/s. 35 (3) of BNSS. When such being the case, the order passed by the trial court cannot be held to be not correct. The Hon'ble Apex Court has time and again held issuance of notice u/s.35 (3) of BNSS is mandatory if the punishment provided under respective provision is less than 7 years, unless the IO thinks arrest is necessitated. Admittedly, no notice was issued to the accused by the Investigating officer. Hence, I do not find any error or illegality committed by the trial court in passing the impugned order. Therefore, the revision petition is liable to be rejected. Hence, I answer point No.1 in the '**Negative**'.

9. **Point No.2:** In view of aforesaid reasons on point No.1, I proceed to pass the following;

ORDER

The revision petition filed under Sections 438 & 440 of B.N.S.S. is rejected.

Send the copy of this order to the trial court.

Dictated to the SG-I, typed by her, corrected and then pronounced by me in the Open court, on this the 3rd day of March 2026)

(JAGADEESH V.N.)

II Addl. District & Sessions Judge,
D.K., Mangaluru.